

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (GBD) (SN) ECF Case
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This document relates to:

Ashton, et al. v. al Qaeda Islamic Army, et al., 02-cv-6977 (GBD)(SN) (and member case
Burlingame v. Bin Laden, et al., 02-cv-7230 (GBD)(SN))
Ashton, et al. v. Kingdom of Saudi Arabia, 17-cv-02003 (GBD)(SN)
Schneider, et al. v. al Qaeda Islamic, 02-cv-7209 (GBD)(SN)

**The Dimino Wrongful Death Plaintiffs' Motion for
Entry of Awards of Compensatory Economic Damages &
Amended Partial Default Judgment Against the Islamic Republic of Iran**

We respectfully ask for expedited relief on this application since the United States Victims of State Sponsored Terrorism Fund has set September 20, 2024, as the date for its final acceptance of compensatory damage awards for distributions in January 2025. We only received the expert report attached to the accompanying Declaration of John F. Schutty, Esq. from plaintiffs' prior counsel earlier this week.

For the reasons set forth below, and the exhibits attached to and statements contained in the Declaration of John F. Schutty, Esq. ("Schutty Declaration"), Nancy Dimino, individually as spouse, and as Personal Representatives of the Estate of Stephen Dimino, deceased, and Sabrina Dimino, individually as surviving child of Stephen Dimino, deceased ("the *Dimino* Plaintiffs"), Plaintiffs herein, a *Schneider* subset of *Ashton* Plaintiffs,¹ respectfully apply for awards of

¹ The *Schneider* (02-cv-7209) and *Ashton* (02-cv-6977) matters were ordered consolidated for liability purposes and mandated to proceed under the *Ashton, et al. v. al Qaeda Islamic Army, et al.* master docket number 02-cv-6977, with the filing of a consolidated master complaint. See 02-cv-6977, Doc. No. 11, entered 03/06/2003. The *Schneider* plaintiffs remain segregated within all consolidated *Ashton* filings and are identified therein according to their separate docket number and counsel. See, e.g., 02-cv-6977, Doc. No. 465, filed 09/30/2005.

compensatory economic damages to be added to their existing partial final judgment against the Defendant Islamic Republic of Iran (“Iran”). The *Dimino* plaintiffs were previously awarded conscious pain and suffering - *see* 03-md-1570 MDL ECF#3226 - and solatium damages – *see* 02-cv-7209 ECF#54, and now request a supplemental award of economic loss damages. The *Dimino* Plaintiffs request an Order:

(1) Acknowledging that this Court has previously granted the *Dimino* plaintiffs damages for their decedent's conscious pain and suffering and solatium damages against Defendant Iran;²

(2) Acknowledging that this Court previously granted permission to all plaintiffs to submit applications for additional damages awards in later stages, to the extent such awards have not previously been addressed [*see, e.g.* 02-cv-7209 ECF#54] against the Defendant Iran; and now,

(3) Now awarding economic loss damages in the amounts set forth herein, as supported by the attached economic expert report and analysis.

This motion is made only on behalf of the appointed Personal Representative and state-recognized heirs of the Estate of Stephen Dimino, and specifically, the individuals and amounts listed in the simultaneously filed “Proposed Order Awarding Compensatory Economic Damages & Amended Partial Default Judgment Against Iran on Behalf of the *Dimino* Plaintiffs,” in light of this Court's previous order granting permission to allow certain

² On March 8, 2016, Judge George B. Daniels issued an order awarding conscious pain and suffering for the *Dimino* plaintiffs. *See* MDL ECF#3226: "Order that . . . compensatory damages for conscious pain and suffering [are awarded] in the amount of \$2,000,000 . . ."

On September 23, 2020, Judge George B. Daniels issued an order awarding damages for solatium (individually: spouse and children) for the *Dimino* Plaintiffs. *See* 02-cv-7209, ECF#54: "Ordered that . . . are awarded solatium damages [Nancy Dimino, spouse, \$12,500,000 and Sabrina Dimino, child, \$8,500,000] . . ."

remaining *Ashton* Plaintiffs to move for this relief. *See* 03-md-1570 (02-cv-6977) (S.D.N.Y.) (GBD) (FM), Doc. No. 3987, filed 04/30/2018.

Award of Economic Damages

The FSIA specifically provides for economic damages. *See* 28 U.S.C. § 1605A(c). The economic damages provision is “designed to compensate [a] decedent's heirs-at-law for economic losses which result from [the] decedent's premature death.” *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 27 (D.D.C. 1998). Accordingly, “the beneficiaries of each decedent's estate [are] . . . entitled to recover the present value of economic damages, including lost wages that the decedents might reasonably have been expected to earn but for their wrongful deaths.” *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 81-82 (D.D.C. 2010), citing *Heiser*, 466 F. Supp. 2d 229. Thus, for example, Royce C. Lamberth of the United States District Court for the District of Columbia, in a series of decisions issuing final judgments against the Islamic Republic of Iran under the FSIA, has held Iran “liable for the economic damages caused to decedents' estates.” *Roth v. Islamic Republic of Iran*, 78 F. Supp. 3d 379, 399-400 (D.D.C. 2015), quoting *Valore*, 700 F. Supp. 2d at 78.

Previously, this Court awarded economic damages in each *Havlish* case for the “economic losses stemming from the wrongful death of the decedent[.]” *See* 03-md-1570 (02-cv-6977) (S.D.N.Y.) (GBD) (FM), Doc. No. 2623, Entered 10/03/12, pp. 2-3. In doing so, it adopted the economic loss calculations set forth in the *Havlish* plaintiffs’ economic expert reports. The Estate of Stephen Dimino respectfully ask this Court to award economic damages set forth in the simultaneously filed “Proposed Order Awarding Compensatory Economic Damages & Amended Partial Default Judgment Against Iran on Behalf of the *Dimino* Plaintiffs” and supported by the economic expert reports attached as Exhibits A to the Schutty Declaration. The

Personal Representative claimants listed in the “Proposed Order Awarding Compensatory Economic Damages & Amended Partial Default Judgment Against Iran on Behalf of the *Dimino* Plaintiffs” opted to seek compensation through the September 11 Victim Compensation Fund of 2001 (the “VCF”) and in connection with that claim, gathered information relevant to the economic losses suffered as result of their decedent’s wrongful death, which included both documentary evidence of the decedent’s earnings as well as interviews with decedent’s surviving spouse, colleagues and other witnesses. The Estate of Stephen Dimino retained an expert who has rendered recent opinions as to the economic losses that resulted from the wrongful death of Mr. Dimino. Attached as Exhibit A to the Schutty Declaration is an economic expert report that details the economic loss. The expert report also includes a description of the methodology used for his calculations.

Conclusion

For all the reasons, herein, as well as those set forth in the previous submissions of the *Ashton* Plaintiffs and other plaintiffs, the *Dimino* Plaintiffs herein respectfully request that this Court grant the accompanying proposed Order:

- (1) Acknowledging that this Court has previously granted the *Dimino* plaintiffs damages for their decedent's conscious pain and suffering and solatium damages against Defendant Iran;³
- (2) Acknowledging that this Court previously granted permission to all plaintiffs to submit applications for additional damages awards in later stages, to the extent such awards have not previously been addressed [*see, e.g.* 02-cv-7209 ECF#54] against the Defendant Iran; and now,
- (3) Awarding economic loss damages in the amounts set forth herein (\$17.2 million),

³ See footnote 2.

as supported by the attached economic expert report and analysis.

Dated: New York, New York
September 13, 2024

Respectfully submitted,

LAW OFFICE OF JOHN F. SCHUTTY, P.C.

By: /s/ *John F. Schutty*

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